

Westfield Township Board of Zoning Appeals

August 28, 2013

The meeting was called to order by Chairman Mike Schmidt. Members present: Kathleen LeMar, Pat Kwas, Kevin Daugherty, Lee Evans, Mike Schmidt and secretary Sherry Clarkson. Member absent: Wayne Moore. Guests in attendance: Chris Lagorga, Heidi Hendrix, Ron Oiler, David Folk, Gary Harris, Jim Likley and Matt Witmer.

Mr. Schmidt advised before us tonight is an application for a Use Variance for Christopher Lagorga residing at 8155 Ryan Road, Seville, Ohio. Mr. Lagorga is requesting a Use Variance from Section 506B of the zoning code to permit the proposed use: One access way shall be permitted for each lot. Applicant is requesting a variance to allow two access ways on the property.

Mr. Lagorga was sworn in by the secretary and proceeded to advise the board that he went to the Highway Engineer's office and advised that this was his first time in doing this. He advised he needed a driveway permit in order to build a barn. He advised he did not know that he needed a permit at the township level. Unfortunately the county did not advise that he needed to check with the township first. Mr. Schmidt asked if Mr. Lagorga brought any paperwork with him in order to provide testimony on his behalf. Unfortunately Mr. Lagorga advised he did not bring paperwork with him. Zoning Inspector Matt Witmer did provide members with copies of what was given to him from Mr. Lagorga (permit information).

Matt Witmer was sworn in and advised that he saw the driveway and dropped off a card and requested Mr. Lagorga contact him. Matt advised according to township regulations, we only allow one driveway to the property. At this point the driveway was already in. Mr. Lagorga requested that he be allowed to address the board in order for him to be allowed to have a driveway for his barn. Matt Witmer advised the Highway Engineer's office advised that there are too many townships within the county and they do not check each township. A copy of the permit was given to the zoning inspector (see exhibit A) with highlighted area identifying that the applicant is required to check with the township to see if any additional permit is needed at the township level.

Exact verbiage: Responsibility If this permit is granted I/we agree to comply with all the conditions, restrictions and regulations of the Engineer's Department in such cases made and required. If this permit is granted I/we hereby agree to construct that part of the driveway within the road right-of-way (apron) as an approved profile as shown on the Medina County Highway Engineer's Driveway Detail sheet as required by the Medina County Commissioners' Highway Use Manual, and under any additional requirements of the appropriate Township Trustees for that Township.

Mr. Daugherty provided the applicant with a copy and asked if this looked like what he had signed. The applicant advised "yes".

Mr. Witmer provided the second page to the board (see exhibit B). Mr. Witmer advised Exhibit A stays with the county and Exhibit B goes to the applicant.

Mr. Lagorga advised he had no further testimony, and unfortunately he did not read the fine print whereby he was to notify the township. Mr. Lagorga advised his friend who was also the contractor advised him to pull a permit prior to his doing the work. Mr. Lagorga advised his friend is bonded to work within the township. Mr. Lagorga upon obtaining the permit did advise his contractor and showed the permit to him.

Mr. Schmidt advised County and State roads only allow one access way, townships can differ. Mr. Schmidt did read our zoning resolution whereby we also only allow one access way.

Gary Harris was sworn in and advised he was at the Highway's Engineer's office and he was advised that the county roads do allow more than one driveway to properties (on county roads). It was noted the state only allows one access way, but should an applicant want more than one, you must apply to the state via a permit. The state takes on an individual basis. Kathleen LeMar asked Gary Harris if the applicant wanted another driveway, would he have to go back to the county? Gary Harris answered no, this is at the township level now, since the area the applicant lives in is township. Going down Ryan from Kennard from Greenwich is County. Ryan headed east, is township, changes to Guilford Township and then county. The applicants address is Ryan Road but the driveways are on Kennard Road.

Matt clarified the property is on a corner lot. The address is on Kennard Road. It does not matter corner lot or not, you are only allowed one access way per property. It does not matter whether county or state road, as per our regulations you are only allowed one access way per property .

Kathleen LeMar asked why only access way allowed? Matt Witmer advised there may have been a study done some time ago, and this is why it was enacted. He checked with the Prosecutor's office and the Prosecutor's office advised it may have been a safety factor. It is unknown why this was done and when it was done some time ago. There is no definite answer.

Kathleen LeMar explained the Use Variance criteria the BZA must go by as we are a quasi-judicial board and we have criteria and parameters to follow whenever a decision is made and it is set that we have to do this. With the use variance, which is the type of variance we were advised you need to follow. A use variance is the hardest variance to get passed because there are several criteria which you must meet in order to be granted this variance. Ms. LeMar proceeded to read the criteria to the applicant.

- Uses listed as permitted uses in the zoning district (can/cannot) be reasonably established on the property and (would/would not) be economically viable without a variance.
- The requested variance (is/is not) the minimum variance which will afford relief to the property owner
- The essential character of the neighborhood (would/would not) be substantially altered and adjoining properties (would/would not) suffer interference with their proper future development and rights as a result of the variance.

- The property in question (does/does not) have unique or exceptional circumstances or conditions that do not generally apply to other properties in the vicinity and within the same district
- The hardship condition (was/was not) created by the actions of the applicant
- The spirit and intent behind the zoning code (would/would not) be observed and substantial justice (would/would not) be done by granting the variance
- The requested use (is/is not) similar in impact to the permitted uses in the subject district.
- The subject property (is/is not) adequate to meet the needs and requirement of the proposed use .

The board advised we need to go through each item and the applicant needs to present evidence as to why this should be granted. It was noted that the applicant did not present any evidence.

The applicant advised that he has a truck and trailer and in order to use the current driveway, he would have to make a sharp 90 degree turn and avoid a tree, telephone pole and a small shed, which currently exist.

Ms. LeMar advised that she visited the property and asked that the new driveway be used as the driveway and come in and go to the right to the garage, thereby removing/ eliminating the old driveway and use the new driveway to go straight back to the barn and also use that driveway making a turn to the right to the current garage (having to be 30 ft. from the middle of the road, that is where you can start your branch to the right.)

Ms. LeMar asked "Would you be willing to do this?" Lee Evans advised that we would need to set a time limit for a removal for the current old driveway. If the applicant is in agreement, we would not need to hear a request for a use variance. We could set a time frame of allowing 30 days for removal of the old driveway.

Mr. Folk advised we could do this, or table and then review again within a certain time limit. The applicant could also ask that the Use Variance be withdrawn from discussion at the present time. Mr. Witmer advised that if the applicant is denied, he cannot come back, he would have to immediately remove the second drive (new driveway).

I think in the interest of judicial economy if the applicant is willing to use the new driveway for ease of getting to the new barn and run a drive off the new drive to get to the house, he can withdraw or we can table to a point of time advised Mr. Folk.

The applicant advised he is willing to withdraw application and remove the old driveway and keep the current driveway (new driveway). The Zoning Inspector advised the applicant needs to let him know when he can re-inspect again.

Mr. Daugherty asked the applicant to make a formal statement for the record. Mr. Lagorga advised he would like to withdraw his application for a Use Variance.

Matt Witmer advised the applicant needs to have work done within 60 days otherwise a citation will be issued and it will be taken before the Prosecutor's office. It was noted that the applicant needs to go 30 ft. off the r-o-w before going to the right to the garage. It was also requested that the applicant stake the property off and contact the zoning inspector prior to placing a hard surface (eg. Gravel, etc.)down.

A motion was made by Kevin Daugherty to accept the withdrawal of the Use Variance from the applicant, Christopher Lagorga. A second to the motion was made by Pat Kwas. A roll call was taken as follows: Kathleen Lemar-aye; Pat Kwas-aye; Kevin Daugherty-aye; Lee Evans-aye; Mike Schmidt-aye. All were in favor and the motion carried.

Other Business

Kathleen LeMar advised she talked to Bill Thorne regarding a correction to the minutes as follows:

Kathleen LeMar made a motion to change the meeting minutes of January 3, 2013 (with reference to the minutes of November 15, 2012): whereby on the bottom of page 1 and the top of page 2 the following: Chairman Schmidt advised Kathleen LeMar made a comment, which should be inserted at the bottom of Page 2, whereby Chairman Schmidt asked Kathleen LeMar if she had visited the site and she replied no.

Ms. LeMar advised the meeting minutes read as follows:

...whereby Chairman Schmidt asked Kathleen Lemar if she had visited the site and she replied no, but I drove into the driveway next door and had a clear view of the construction.

A motion was made by Kathleen LeMar to correct this. A second to the motion was made by Pat Kwas. A roll call was taken: Kathleen Lemar-aye; Pat Kwas-aye; Kevin Daugherty-aye; Lee Evans-aye; Mike Schmidt-aye. All were in favor the motion passes.

Upcoming Meeting - Clean Energy, Pilot Travel Centers

In looking at the calendar, it was noted the date selected for upcoming meeting will be Wednesday, September 18, 2013 at 7:30 pm. Paperwork will be given to secretary regarding contiguous property owners by Matt Witmer, which was not available tonight.

With no other business to be brought forward Chairman Schmidt asked for a motion to adjourn the meeting. Such motion was made by Lee Evans. A second to the motion was made by Kathleen LeMar. The meeting was adjourned at 8:30 pm.

Respectfully Submitted,

Sherry Clarkson, Zoning Secretary